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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,342	07/10/2003	Michael R. Myers	P24,592-A USA	2748
7590	09/30/2005		EXAMINER	
Synnestvedt, Lechner & Woodbridge P.O. Box 592 Princeton, NJ 08542			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	
DATE MAILED: 09/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/617,342	MYERS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 July 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 7-9 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5 and 6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

I. Restriction requirement is final. Applicant argues that inventions are not independent. Applicant argues that subject matter of the five groups requires a search be done for the subject matter of groups of claims, because the groups are interrelated. For example, it is argued that methods and composition of Groups I, II, III, and IV claims involve the compound of Group V. Examiner disagrees with Applicant. Examiner argues that the Groups are independent because a reference reading on Group I may not read on all the Groups. Therefore, a different search strategy is required. While the compound may be used in all Groups, the condition is different. For example, Group I is to bone, whereas Group II is to inhibition of cell proliferation. Therefore, a references reading on Group I may not read on Group II, because although the compounds are common to both Groups the condition is different.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 6057320. Although the conflicting claims are not identical, they are not patentably distinct from each other because USPN '320 discloses compound of the instant claim 5 such as 6,7-dimethoxy-4-naphthalen-2-ylethynylquinazoline or 4-phenylacetylenyl-6, 7-dimethoxy quinazoline. USPN '320 does not disclose pharmaceutical compositions to those compounds. However, USPN '320 reads on the instant pharmaceutical composition in claim 5 since the claim recites said named compounds requiring the addition of no other component such a solvent. Therefore claim 5 reads as a compound claim.

Claim 5,6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6645969. Although the conflicting claims are not identical, they are not patentably distinct from each other because USPN '969 teaches pharmaceutical compositions comprising a number of actives encompassing the instant actives (6,7-dimethoxy-4-naphthalen-2-ylethynylquinazoline, 4-phenylacetylenyl-6,7-dimethoxy quinazoline or 6,7-dimethoxy-4-naphthalen-1-ylethynylquinazoline) of the claims. Claim 12 of USPN '320 is to compounds present in the pharmaceutical formulation of instant claim 5. Since claim 5 is only to a pharmaceutical formulation comprising the actives, the instant formulation claims read as compound claims.

Claim 5,6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-12 of U.S. Patent No. 5710158. Although the conflicting claims are not identical, they are not patentably distinct from

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each other because USPN '158 teaches pharmaceutical compositions comprising a number of actives encompassing the instant actives [4-(pyrazol-3-ylamino)-6,7-dimethoxyquinazoline, 6,7-dimethoxy-4-(alpha-naphthylamino)quinazoline, 6,7-dimethoxy-4-(beta-naphthylamino)quinazoline, 4-(3-chlorophenoxy)-6,7-dimethoxy quinazoline or 4-(4-hydroxyphenyl)-6,7-dimethoxyquinazoline] of the claims. Claims 8-12 of USPN '158 are to compounds present in the pharmaceutical formulation of instant claims 5-6. Since claims 5-6 is only to a pharmaceutical formulation comprising the actives, the instant formulation claims read as compound claims.

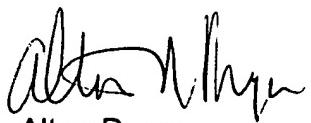
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Alton Pryor  
Primary Examiner  
AU 1616